

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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		:
HARBINGER F&G, LLC,		: No. 12-civ-5315 (RA)
		:
Plaintiff,		: ECF Case
v.		:
		:
OM GROUP (UK) Limited,		:
		:
Defendant.		:
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**DECLARATION OF OLGA KAPLAN IN SUPPORT OF
PLAINTIFF/COUNTERCLAIM DEFENDANT HARBINGER F&G, LLC'S
MOTION FOR SUMMARY JUDGMENT**

I, Olga Kaplan, hereby declare as follows:

1. I am associated with Debevoise & Plimpton LLP ("Debevoise"), counsel to Harbinger F&G LLC ("Harbinger"). I am admitted to practice law in the Southern District of New York.
2. I submit this declaration in support of Harbinger's Motion for Summary Judgment against OM Group (UK) Limited ("OM").
3. Attached hereto are true and correct full copies or relevant excerpts as noted, except for the highlighting by Debevoise of relevant language, of the following documents:
4. Attached as Exhibit 1 is a copy of First Amended and Restated Stock Purchase Agreement ("SPA") between OM and Harbinger, dated Feb. 17, 2011.
5. Attached as Exhibit 2 is a copy of Reinsurance Term Sheet ("Term Sheet"), attached as Exhibit K to the SPA.

6. Attached as Exhibit 3 is a copy of original Stock Purchase Agreement between OM and Harbinger, dated August 5, 2010.

7. Attached as Exhibit 4 is a copy of email from Phil Gass to Gus Cheliotis, dated July 15, 2010, attaching Harbinger's bid proposals to OM, dated May 27, 2010 and April 30, 2010, marked as Plaintiff's Deposition Exhibit 79, bearing the Bates numbers HARB-E0008776 to HARB-E0008790.

8. Attached as Exhibit 5 is a copy of letter from the Maryland Insurance Administration (the "MIA") to Barry Ward, dated Oct. 6, 2010, bearing the Bates numbers HARB-E0125381 to HARB-E0125383.

9. Attached as Exhibit 6 is a copy of letter from Carey G. Child of Chadbourne & Parke LLP, former counsel to Harbinger, to Michael Mayberry of Lewis & Ellis Inc., dated Nov. 10, 2010, attaching Nov. 5, 2010, memorandum from Milliman Inc., marked as Defendant's Deposition Exhibit 3, bearing the Bates numbers HARB-E0067892 to HARB-E0067897.

10. Attached as Exhibit 7 is a copy of email from Chris Read to Vic Lumby and Eric Marhoun, dated Dec. 20, 2010, marked as Plaintiff's Deposition Exhibit 20, bearing the Bates numbers HARB-E0112681 to HARB-E0112682.

11. Attached as Exhibit 8 is a copy of email from Alex Duncan to Philip Broadley and Julian Roberts, dated Jan. 27, 2011, attaching OM's counter-proposal to Harbinger dated Jan. 27, 2011, marked as Plaintiff's Deposition Exhibit 32, bearing the Bates numbers OM-HARB-0002938 to OM-HARB-0002941.

12. Attached as Exhibit 9 is a copy of letter from Phil Gass to Alex Duncan, dated Jan. 28, 2011, relevant excerpts of marked Plaintiff's Deposition Exhibit 33, bearing the Bates numbers OM-HARB-0002944 to OM-HARB-0002948.

13. Attached as Exhibit 10 is a copy of relevant excerpts of a letter from Nicholas Potter of Debevoise to the Neil Miller of the MIA, dated Feb. 18, 2011, bearing the Bates numbers HARB-E0120205 to HARB-E0120210.

14. Attached as Exhibit 11 is a copy of email from Alex Duncan to Barry Ward, dated March 2, 2011, marked as Plaintiff's Deposition Exhibit 72, bearing the Bates numbers HARB-E0142627 to HARB-E0142628.

15. Attached as Exhibit 12 is a copy of email from Phil Gass to Philip Falcone, dated March 31, 2011, attaching the MIA's Form A approval letter dated March 31, 2011, bearing the Bates numbers HARB-E0142896 to HARB-E0142901.

16. Attached as Exhibit 13 is a copy of email from Elizabeth Bannigan of Dewey to Michael Devins of Debevoise, dated May 31, 2011, attaching comments to the draft Form D and Coinsurance Agreement dated May 23, 2011, relevant excerpts of marked Plaintiff's Deposition Exhibit 64, bearing the Bates numbers HARB-E0016500 to HARB-E0016501.

17. Attached as Exhibit 14 is a copy of letter from Eric Marhoun to the Neil Miller of MIA, dated July 26, 2011, attaching the Form D filing, marked as Defendant's Deposition Exhibit 17, bearing the Bates numbers HARB-E0098095 to HARB-E0098201.

18. Attached as Exhibit 15 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey, Elizabeth Bannigan and Donald Henderson of Dewey, dated Aug. 26, 2011, marked as Plaintiff's Deposition Exhibit 36, bearing the Bates numbers OM-HARB-0019268 to OM-HARB-0019273.

19. Attached as Exhibit 16 is a copy of email from Elizabeth Bannigan of Dewey to Christopher Ray of Debevoise, dated Oct. 3, 2011, attaching OM's comments to a draft letter to the MIA dated Sept. 29, 2011, bearing the Bates numbers HARB-E0000132 to HARB-E0000142.

20. Attached as Exhibit 17 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey and Elizabeth Bannigan of Dewey, dated Oct. 5, 2011, attaching letter to the MIA dated Oct. 4, 2011, marked as Defendant's Deposition Exhibit 108, bearing the Bates numbers OM-HARB-0012135 to OM-HARB-0012191.

21. Attached as Exhibit 18 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey, Elizabeth Bannigan and Donald Henderson of Dewey, dated Oct. 26, 2011, bearing the Bates number HARB-E0154361.

22. Attached as Exhibit 19 is a copy of relevant excerpts of email from the Lynn Beckner of MIA to Barry Ward, dated Nov. 10, 2011, bearing the Bates numbers HARB-E0119302, HARB-E0119306 to HARB-E0119307.

23. Attached as Exhibit 20 is a copy of email from Eric Marhoun to the Alex Hart of MIA, dated Nov. 15, 2011, bearing the Bates numbers HARB-E0143429 to HARB-E0143430.

24. Attached as Exhibit 21 is a copy of email from Donald Henderson of Dewey to Michael Devins of Debevoise, dated Nov. 15, 2011, marked as Plaintiff's Deposition Exhibit 39, bearing the Bates numbers OM-HARB-0013768 to OM-HARB-0013769.

25. Attached as Exhibit 22 is a copy of a presentation to the MIA in connection with the Reinsurance Transaction on Nov. 16, 2011, bearing the Bates numbers HARB-E0043021 to HARB-E0043036.

26. Attached as Exhibit 23 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey, Elizabeth Bannigan and Donald Henderson of Dewey, dated Dec. 1, 2011, marked as Defendant's Deposition Exhibit 23, bearing the Bates numbers OM-HARB-0018687 to OM-HARB-0018689.

27. Attached as Exhibit 24 is a copy of email from Barry Ward to the Lynn Beckner of MIA, dated Dec. 2, 2011, attaching a memorandum from Milliman Inc. dated Nov. 5, 2010, bearing the Bates numbers HARB-E0049353 to HARB-E0049358.

28. Attached as Exhibit 25 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey, Elizabeth Bannigan and Donald Henderson of Dewey, dated Dec. 6, 2011, bearing the Bates number HARB-E0154395.

29. Attached as Exhibit 26 is a copy of letter from Barry Ward to the Lynn Beckner of MIA, dated Dec. 7, 2011, marked as Defendant's Deposition Exhibit 20, bearing the Bates numbers HARB-E0132019 to HARB-E0132023.

30. Attached as Exhibit 27 is a copy of relevant excerpts of an email from Eric Marhoun to the Lynn Beckner of the MIA, dated Dec. 7, 2011, attaching a letter to

the MIA dated Dec. 7, 2011, bearing the Bates numbers HARB-E0001095 to HARB-E0001097.

31. Attached as Exhibit 28 is a copy of email from Barry Ward to Lee Launer, Phil Gass, Eric Marhoun and Gus Cheliotis, dated Dec. 9, 2011, marked as Defendant's Deposition Exhibit 24, bearing the Bates numbers HARB-E0167382 to HARB-E0167383.

32. Attached as Exhibit 29 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey, Elizabeth Bannigan and Donald Henderson of Dewey, dated Dec. 9, 2011, marked as Defendant's Deposition Exhibit 52, bearing the Bates number HARB-E0154382.

33. Attached as Exhibit 30 is a copy of email from Lee Launer to Barry Ward and Phil Gass, dated Dec. 16, 2011, bearing the Bates number HARB-E0000986.

34. Attached as Exhibit 31 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey, Elizabeth Bannigan and Donald Henderson of Dewey, dated Dec. 20, 2011, bearing the Bates number HARB-E0154347.

35. Attached as Exhibit 32 is a copy of email from Barry Ward to Phil Gass and Lee Launer, dated Dec. 21, 2011, bearing the Bates number HARB-E0140252.

36. Attached as Exhibit 33 is a copy of handwritten notes by Michael Devins of Debevoise, dated Dec. 21, 2011 and March 15, 2012, marked as Defendant's Deposition Exhibit 56, bearing the Bates numbers HARB-P0000629 to HARB-P0000632.

37. Attached as Exhibit 34 is a copy of email from Michael Devins of Debevoise to Gus Cheliotis, Phil Gass and Eric Marhoun, dated Dec. 23, 2011, marked as Defendant's Deposition Exhibit 26, bearing the Bates number HARB-E0161422.

38. Attached as Exhibit 35 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey of Dewey, dated Jan. 9, 2012, bearing the Bates numbers HARB-E0027380 to HARB-E0027386.

39. Attached as Exhibit 36 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey of Dewey, dated Jan. 9, 2012, bearing the Bates numbers HARB-E0098694 to HARB-E0098699.

40. Attached as Exhibit 37 is a copy of email from the Neil Miller of MIA to Barry Ward, dated Jan. 11, 2012, attaching the Jan. 10, 2012, MIA Form D disapproval letter, marked as Defendant's Deposition Exhibit 7, bearing the Bates numbers HARB-E0140247 to HARB-E0140251.

41. Attached as Exhibit 38 is a copy of email from Michael Devins of Debevoise to Kirk Lipsey and Elizabeth Bannigan of Dewey, dated Jan. 18, 2012, relevant excerpts of marked Defendant's Deposition Exhibit 121, bearing the Bates numbers HARB-E0129242 to HARB-E0129246.

42. Attached as Exhibit 39 is a copy of email from Michael Devins of Debevoise to Elizabeth Bannigan and Kirk Lipsey of Dewey, dated Jan. 20, 2012, marked as Defendant's Deposition Exhibit 123, bearing the Bates numbers OM-HARB-0013103 to OM-HARB-0013105.

43. Attached as Exhibit 40 is a copy of email from the Karen Hornig of MIA to Ralph Tyler of Venable LLP, former MIA Commissioner, dated Jan. 20, 2012, attaching the Lewis & Ellis report, marked as Defendant's Deposition Exhibit 8, bearing the Bates numbers HARB-E0136252 to HARB-E0136265.

44. Attached as Exhibit 41 is a copy of email from Michael Devins of Debevoise to Ralph Tyler, former MIA Commissioner, dated Jan. 21, 2012, bearing the Bates numbers HARB-E0162197 to HARB-E0162198.

45. Attached as Exhibit 42 is a copy of email from Eric Marhoun to Michael Devins of Debevoise and Ralph Tyler, former MIA Commissioner, dated Jan. 27, 2012, bearing the Bates numbers HARB-E0164808 to HARB-E0164809.

46. Attached as Exhibit 43 is a copy of email from Ralph Tyler, former MIA Commissioner, to Michael Devins of Debevoise, Gus Cheliotis, Eric Marhoun and Phil Gass, dated Jan. 31, 2012, marked as Defendant's Deposition Exhibit 126, bearing the Bates numbers HARB-E0162005 to HARB-E0162007.

47. Attached as Exhibit 44 is a copy of letter from Ralph Tyler, former MIA Commissioner, to the MIA Commissioner, Therese Goldsmith, dated Feb. 7, 2012, marked as Defendant's Deposition Exhibit 127, bearing the Bates numbers HARB-E0027010 to HARB-E0027015.

48. Attached as Exhibit 45 is a copy of letter from the MIA Commissioner, Therese Goldsmith, to Ralph Tyler, former MIA Commissioner, dated Feb. 8, 2012, marked as Defendant's Deposition Exhibit 128, bearing the Bates numbers HARB-E0026997 to HARB-E0027001.

49. Attached as Exhibit 46 is a copy of email from Michael Devins of Debevoise to Laird Zacheis of Milliman Inc., dated Feb. 9, 2012, bearing the Bates numbers HARB-E0033391 to HARB-E0033395.

50. Attached as Exhibit 47 is a copy of letter from Ralph Tyler, former MIA Commissioner, to the MIA Commissioner, Therese Goldsmith, dated Feb. 9, 2012, attaching a memorandum from Milliman Inc. dated Feb. 9, 2012, marked as Defendant's Deposition Exhibit 12, bearing the Bates numbers HARB-E0001210 to HARB-E0001216.

51. Attached as Exhibit 48 is a copy of email from Eric Marhoun to John Tweedie and Jean-Francois Lemay, dated Feb. 12, 2012, bearing Bates numbers HARB-E0162667 to HARB-E0162674.

52. Attached as Exhibit 49 is a copy of email from Ralph Tyler, former MIA Commissioner, to Eric Marhoun, Gus Cheliotis and Michael Devins of Debevoise, dated Feb. 13, 2012, marked as Defendant's Deposition Exhibit 131, bearing Bates number HARB-E0162744.

53. Attached as Exhibit 50 is a copy of email from Eric Marhoun to Ralph Tyler, former MIA Commissioner, and Michael Devins of Debevoise, dated Feb. 13, 2012, attaching comments to draft talking points for MIA meeting, marked as Defendant's Deposition Exhibit 129, bearing the Bates numbers HARB-E0162983 to HARB-E0162984.

54. Attached as Exhibit 51 is a copy of email from Phil Gass to Philip Falcone, dated Feb. 15, 2012, attaching a draft summary of the Feb. 14, 2012, meeting

with the MIA, marked as Defendant's Deposition Exhibit 65, bearing the Bates numbers HARB-E0162663 to HARB-E0162665.

55. Attached as Exhibit 52 is a copy of email from Phil Gass to Omar Asali, dated Feb. 27, 2012, attaching a letter from Eric Marhoun to the MIA Commissioner, Therese Goldsmith, dated Feb. 27, 2012, marked as Defendant's Deposition Exhibit 132, bearing the Bates numbers HARB-E0031949 to HARB-E0031952.

56. Attached as Exhibit 53 is a copy of email from Ralph Tyler, former MIA Commissioner, to Eric Marhoun and Michael Devins of Debevoise, dated March 1, 2012, marked as Defendant's Deposition Exhibit 66, bearing the Bates numbers HARB-E0165259 to HARB-E0165260.

57. Attached as Exhibit 54 is a copy of email from Ralph Tyler, former MIA Commissioner, to the Van Dorsey of MIA, dated March 9, 2012, marked as Defendant's Deposition Exhibit 134, bearing the Bates numbers HARB-E0065290 to HARB-E0065291.

58. Attached as Exhibit 55 is a copy of email from Michael Devins of Debevoise to Ralph Tyler, former MIA Commissioner, Barry Ward and Eric Marhoun, dated March 13, 2012, attaching draft talking points for the MIA meeting, dated March 12, 2012, marked as Defendant's Deposition Exhibit 136, bearing the Bates numbers HARB-E0165275 to HARB-E0165277.

59. Attached as Exhibit 56 is a copy of email from Ralph Tyler, former MIA Commissioner, to Michael Devins of Debevoise, Eric Marhoun and Barry Ward, dated

March 14, 2012, marked as Defendant's Deposition Exhibit 138, bearing the Bates numbers HARB-E0165134 to HARB-E0165135.

60. Attached as Exhibit 57 is a copy of email from Ralph Tyler, former MIA Commissioner, to Michael Devins of Debevoise and Eric Marhoun, dated March 16, 2012, attaching a draft letter to the MIA, bearing the Bates numbers HARB-E0165267 to HARB-E0165268.

61. Attached as Exhibit 58 is a copy of email from Alex Duncan to Phil Gass, dated March 23, 2012, bearing the Bates numbers HARB-E0111361 to HARB-E0111362.

62. Attached as Exhibit 59 is a copy of letter from Omar Asali to OM, dated April 6, 2012, relevant excerpts of marked Defendant's Deposition Exhibit 60, bearing the Bates numbers HARB-E0029395 to HARB-E0029397.

63. Attached as Exhibit 60 is a copy of email from Phil Gass to Alex Duncan, dated May 1, 2012, marked as Defendant's Deposition Exhibit 105, bearing the Bates numbers OM-HARB-0005483 to OM-HARB-0005485.

64. Attached as Exhibit 61 is a copy of email from Alex Duncan to Phil Gass, dated May 2, 2012, attaching OM's proposal, marked as Defendant's Deposition Exhibit 82, bearing the Bates numbers OM-HARB-0005487 to OM-HARB-0005501.

65. Attached as Exhibit 62 is a copy of email from Phil Gass to Alex Duncan, dated May 15, 2012, attaching Harbinger's response to OM's proposal, dated May 15, 2012, marked as Plaintiff's Deposition Exhibit 76, bearing the Bates numbers HARB-E0112013 to HARB-E0112016.

66. Attached as Exhibit 63 is a copy of email from Jean-Francois Lemay to Phil Gass, Laird Zacheis, Michael Devins of Debevoise and Gus Cheliotis, dated June 7, 2012, attaching financial projections, marked as Defendant's Deposition Exhibit 154, bearing the Bates numbers HARB-E0165283 to HARB-E0165285.

67. Attached as Exhibit 64 is a copy of email from Colin Campbell to Philip Broadley and Jim Ritchie, dated July 11, 2012, attaching a copy of letter from Michael Devins of Debevoise to OM, dated July 6, 2012, marked as Defendant's Deposition Exhibit 85, bearing the Bates numbers OM-HARB-0002966 to OM-HARB-0002968.

68. Attached as Exhibit 65 is a copy of letter from Barry Ward to the Neil Miller of MIA, dated Sept. 28, 2012, attaching the Form D filing, dated Sept. 28, 2012, relevant excerpts of marked Defendant's Deposition Exhibit 115, bearing the Bates numbers HARB-E0137021 to HARB-E0137139.

69. Attached as Exhibit 66 is a copy of email from Eric Marhoun to the Lynn Beckner of MIA, dated Nov. 16, 2012, attaching a letter to the MIA, bearing the Bates numbers HARB-E0158405 to HARB-E0158412.

70. Attached as Exhibit 67 is a copy of letter from the MIA to Eric Marhoun, dated Dec. 13, 2012, bearing the Bates numbers HARB-E0157568 to HARB-E0157570.

71. Attached as Exhibit 68 is a copy of Excerpts from Transcript of Deposition of Philip A.J. Broadley taken April 29, 2013.

72. Attached as Exhibit 69 is a copy of excerpts from Transcript of Deposition of Alex Duncan taken May 9, 2013.

73. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 4, 2013

/s/ Olga Kaplan

Olga Kaplan